

Message Text

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TAGS: CASC MX,

SUBJ: CONGRESSIONAL HEARING ON AMERICAN PRISONER IN MEXICO:
DIFFERENCES BETWEEN US AND MEXICAN JUDICIAL SYSTEMS

REF: TELECON SIMONSON-MCLENDON JANUARY 9,

FOLLOWING EXPOSITION ATTEMPTS TO POINT OUT SOME SIGNIFICANT
DIFFERENCES BETWEEN US AND MEXICAN LEGAL SYSTEMS, BUT IS
BY NO MEANS COMPREHENSIVE

A. MEXICO IS CIVIL LAW COUNTRY WITH JUDICIAL SYSTEM BASED
ON ROMAN AND NAPOLEONIC CODES, WHILE US SYSTEM BASED
LARGELY ON ENGLISH COMMON LAW. IN CIVIL LAW COUNTRIES,
LAWS ARE WRITTEN SO AS TO BE AS DEFINITIVE AND ALL-
EMBRACING AS POSSIBLE, LEAVING THE JUDGE WITH CONSIDERABLY
LESS DISCRETION IN INTERPRETING THEM THAN IN COMMON LAW
COUNTRIES.

B. MEXICAN CRIMINAL LAW DOES NOT INCLUDE PRESUMPTION THAT
ACCUSED PERSON IS INNOCENT UNTIL PROVEN GUILTY.
CONTRARY TO POPULAR BELIEF, IT DOES NOT CONTAIN
PRESUMPTION THAT ACCUSED PERSON IS GUILTY UNTIL
PROVEN INNOCENT. IT WOULD, HOWEVER, BE FAIR TO SAY
THAT THERE IS AN ASSUMPTION OF SUFFICIENT REASON
UNDERLYING DECISION OF JUDGE TO CONSIGN PRISONER
AFTER INITIAL INTERROGATION AND DECISION OF PROCURADOR
TO BRING TO TRIAL AFTER FULL INVESTIGATION.

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C. PRECEDENTS DO NOT HAVE SAME VALUE IN MEXICO AS IN US. THE DECISION OF ONE COURT, EVEN THE SUPREME COURT, HAS NO BINDING EFFECT ON OTHER COURTS. EMBASSY UNDERSTANDS, THAT IF SUPREME COURT DECIDES FIVE CONSECUTIVE CASES IN SAME MANNER, THE JURIDICAL POINT AT ISSUE BECOMES "JURISPRUDENCE".

D. MEXICAN LAW DOES NOT REQUIRE ARRESTING AUTHORITY TO INFORM DETAINED PERSON OF HIS LEGAL RIGHTS OR CONSTITUTIONAL GUARANTEES. HE IS SUPPOSED TO RECEIVED THIS INFORMATION ONLY AFTER HE IS TURNED OVER TO PUBLIC PROSECUTION BY ARRESTING AUTHORITIES. BY THIS TIME, HIS RIGHTS MAY ALREADY HAVE BEEN VIOLATED.

3. ARTICLE 20, PARA IX, OF CONSTITUTION PROVIDES THAT DETAINED PERSON MAY NAME ATTORNEY IMMEDIATELY UPON ARREST BUT DOES NOT REQUIRE THE AUTHORITIES TO PERMIT THE ATTORNEY PHYSICAL ACCESS TO THE PRISONER UNTIL TRIAL BEGINS, THAT IS, WHEN PRISONER IS CONSIGNED TO JUDGE. EMBASSY FINDS MEXICAN CONSTITUTION AND LAWS SINGULARLY SILENT ON RIGHTS OF ACCUSED PERSON DURING PERIOD IMMEDIATELY FOLLOWING ARREST AND UNTIL HE IS CONSIGNED TO JUDGE. WHETHER OR NOT IT IS BY DESIGN, ARRESTING AUTHORITIES TAKE ADVANTAGE OF THIS SILENCE IN MANY CASES TO OBTAIN, BY VARIOUS MEANS, INFORMATION THEY MIGHT NOT BE ABLE TO OBTAIN IF DETAINEE WERE ABLE TO COMMUNICATE WITH ATTORNEYS OR OTHERS. IT IS DURING THIS PERIOD THAT MOST CASES OF MISTREATMENT ARISE, EVEN THOUGH PHYSICAL ABUSE IS PROHIBITED BY ARTICLE 23 OF CONSTITUTION.

F. CASES IN MEXICO ARE ORDINARILY TRIED BY ONE OR MORE JUDGES, WITHOUT JURY. ARTICLE 20, PARA VI, OR CONSTITUTION PROVIDES FOR PUBLIC TRIAL BY JUDGE OR JURY, BUT GUARANTEES RIGHT TO JURY TRIAL ONLY IN CASES INVOLVING OFFENSES COMMITTED BY MEANS OF THE PRESS AGAINST PUBLIC ORDER OR NATIONAL SECURITY.

G. TRIAL BEGINS WHEN ACCUSED IS CONSIGNED TO
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JUDGE, AND ENDS WITH HIS ACQUITTAL OR SENTENCING. ARTICLE 20, PARA 8, OF CONSTITUTION PROVIDES THAT CASES INVOLVING OFFENSES THE MAXIMUM PENALTY FOR WHICH IS TWO OR MORE YEARS IN PRISON MUST BE RESOLVED WITHIN ONE YEAR OF ARREST. THIS PROVISION IS FREQUENTLY VIOLATED OWING TO HEAVY COURT WORKLOADS, TO DELAYS, DELIBERATE OR OTHERWISE, ON THE PART OF DEFENSE OR PROSECUTION, OR TO CHANGES OF ATTORNEY BY THE ACCUSED.

TIME SERVED PRIOR TO SENTENCING IS COUNTED TOWARD THE SENTENCE GIVEN, BUT THERE APPEARS TO BE NO OTHER RELIEF AVAILABLE TO THE PRISONERS.

H. IN MEXICAN TRIALS, DEFENSE AND PROSECUTION PRESENTATIONS TO JUDGE ARE MADE ALMOST EXCLUSIVELY IN WRITING, WITH LITTLE ORAL TESTIMONY TAKEN. ACCUSED RARELY SEES JUDGE BETWEEN INITIAL AND FINAL HEARINGS, THOUGH HE IS SUPPOSED TO BE PERMITTED TO DO SO IF HE DESIRES. OWING TO THIS LACK OF CONTACT BETWEEN JUDGE AND ACCUSED, AND UNFAMILIARITY WITH THE SYSTEM, MANY AMERICAN PRISONERS BELIEVE THAT THEIR TRIAL HAS NOT BEGUN MANY MONTHS AFTER THE ARREST, EVEN THOUGH IT MAY ALREADY BE NEARLY OVER. THIS IMPRESSION IS REINFORCED BY FAILURE OF MANY MEXICAN ATTORNEYS TO KEEP THEIR CLIENTS INFORMED OF PROGRESS.

I. FAILURE OF THE AUTHORITIES TO RESPECT THE HUMAN, LEGAL OR CONSTITUTIONAL RIGHTS OF AN ACCUSED PERSON WILL NOT RESULT IN THE DISMISSAL OF A CASE EXCEPT WHEN THE ONLY EVIDENCE AGAINST HIM IS A CONFESSION WHICH IS CLEARLY ESTABLISHED TO HAVE BEEN OBTAINED UNDER DURESS. THUS EVIDENCE WHICH IS ILLEGALLY OBTAINED MAY BE USED AGAINST A PERSON. THUS, TOO, A PERSON FOUND IN POSSESSION OF NARCOTICS WILL BE PROSECUTED EVEN THOUGH HE MAY HAVE BEEN SEVERELY MISTREATED BY ARRESTING AUTHORITIES IN EFFORT TO SECURE INFORMATION ABOUT SOURCE OF NARCOTICS. IN LAW, THE ACCUSED MAY PREFER CHARGES AGAINST THE AUTHORS OF THE MISTREATMENT BUT IN PRACTICES FEW DO, FEARING RETALIATION. FOR THE SAME REASON, MANY AMERICAN PRISONERS WILL NOT PERMIT EMBASSY TO MAKE OFFICIAL PROTEST OF MISTREATMENT.

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J. THE RIGHT TO FREEDOM ON BAIL IS GUARANTEED BY ARTICLE 20, PARA I, OF CONSTITUTION ONLY IN CASES WHERE OFFENSE IS PUNISHABLE BY LESS THAN FIVE YEARS IN PRISON. TOP LIMIT FOR BAIL IS SET AT 250,000 PESOS (US 20,000 DOLLARS).

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